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Supreme Court, U.S.
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No. 93-155

IN THE

Supreme Court of the United States

October Term, 1993

GENE AND KATHLEEN SOUTHARDS, *et al.*,
Petitioners,

vs.

MOTEL MANAGEMENT COMPANY,
n/k/a B & M MANAGEMENT COMPANY, INC.,
TAX COLLECTOR, Monroe County, Florida, and
DEPARTMENT OF REVENUE, State of Florida,
Respondents.

On Petition for Writ of Certiorari
To The District Court of Appeal of Florida
Third District

BRIEF IN OPPOSITION OF RESPONDENT STATE OF FLORIDA, DEPARTMENT OF REVENUE

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QUESTION PRESENTED

Whether The Court Should Grant Certiorari To Consider Whether The Application Of Florida's Timeshare Ad Valorem Tax Statute Operates As An Unconstitutional Deprivation Of Petitioner's Rights Under The Due Process And Equal Protection Clauses Of The United States Constitution?

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BRIEF IN OPPOSITION FOR RESPONDENTS

STATEMENT OF THE CASE

The Respondent Florida Department of Revenue hereby adopts as its Statement of the Case the Respondent Motel Management Company's Statement of the Case as found at pages 1-5 of Motel Management's Brief in Opposition.

ARGUMENT

STATES HAVE BROAD LEGISLATIVE CHOICE IN THE FORMULATION OF THEIR TAX STRUCTURES

Contrary to Petitioner's claims, there is no suspect class and no fundamental right involved in this case. Therefore, the applicable standard for measuring the propriety of Florida's time-share tax statute, Fla. Stat. § 192.037 (1991), is whether there is a rational justification for the lines which have been drawn. *United States v. Kras,* 409 U.S. 434, 446, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973).

The statute in question draws no suspect classification based on race, nationality or alienage. *United States v. Kras, supra.*

Here, time-share owners of vacation retreats are treated the same as any group of multiple owners of a single parcel of property where the tax bill is "mailed to one address." *See Day v. High Point Condo Resorts, Ltd.,* 521 So. 2d 1064, 1066 (Fla. 1988).

Instead of paying their taxes to the statutory tax agent, along with their other condo maintenance fees, as required by Fla. Stat. § 192.037(5) (1991), the Petitioners would like to pay their taxes in a piecemeal (or fractional) manner to the Monroe County Tax Collector.

In *Day, supra,* the Florida Supreme Court addressed the piecemeal payment of taxes problem at page 1065:

> The administrative problem is illustrated by the increase in the number of taxpayers if a 200-unit condominium were sold as one-week time-shares. This would result in 10,000 potential taxpayers as owners of a fee time-share estate. In addition,

> other localities, many outside the state. Without question, the fee time-share concept establishes administrative assessment and collection problems for taxing authorities. *The legislature, which has authorized time-share ownership in Chapter 721, addressed the ad valorem assessment and collection problems by adopting section 192.037, Florida Statutes (1985).* [Emphasis added.]

Thus, the Florida Supreme Court has found a "rational basis" for the statute at issue. And, as in *United States v. Kras, supra,* where this Court held that debts could be negotiated, the Southards could have redeemed their tax delinquency prior to tax certificates being issued. *See* Fla. Stat. § 197.472(1) (1991) and *United States v. Kras, supra.*

In Florida law, if property becomes tax-delinquent for a sufficient period of time, it will be sold by the local taxing authorities to satisfy its tax debt. This holds true for virtually every ad valorem tax jurisdiction throughout the United States. Fla. Stat. § 193.102 (1991).

The power to tax is an inherent aspect of sovereignty. *Bode v. Barrett,* 344 U.S. 583, 73 S.Ct. 468, 97 L.Ed. 567 (1953). Consequently, while courts may decide whether property taxed was subject to the taxing power, they cannot review the wisdom of the Legislature in imposing a tax. *City of Pittsburgh v. Alco Parking Corp.,* 417 U.S. 369, 373 (1974). Included within the power to tax is the power to enforce uniformly the collection of a tax by any constitutional means. *United States v. Hester,* 137 F.2d 145, 147-148 (10th Cir. 1943).

In the case of *United States v. Alabama,* 313 U.S. 274, 61 S.Ct. 1011, 85 L.Ed. 1327 (1941), this Court found nothing unconstitutional about a state statute which, like Florida's, imposes a lien for delinquent taxes:

> We find nothing in the Federal Constitution which invalidates such a statutory scheme. Subsequent lienors and purchasers have due notice of the tax liability imposed as of the tax day and of the process of assessment, and that liability, when its amount is definitely ascertained, relates back to the day specified.

61 S.Ct. at 1013. *See also,* Fla. Stat. § 192.053 (1991).

Regarding "notice," it should be emphasized that the Southards purchased their 32nd week of the year time-share vacation retreat with full knowledge of the fact that the managing entity of the time-share project would be "considered the taxpayer." *See* Fla. Stat. § 721.06(1)(h) (1991), for language required to be incorporated into time-share sale contracts.

Lastly, Petitioners claim that the statute in question violates their "fundamental rights." As quoted above in *Day, supra,* the Florida Legislature has "authorized" time-share ownership in Chapter 721, Laws of Florida. Florida case law also holds that time-share ownership is a "creature of statute." *Department of Business Regulation v. Smith,* 471 So. 2d 138, 143 (Fla. 1985). Up until Chapter 721 was enacted in 1981, time-shares were not legally recognized in Florida. *See* Fla. Stat. § 721.02(1) and (2) (1991).

To assert, as Petitioners do, that time-share ownership somehow implicates fundamental rights is highly specious. Time-share ownership did not exist at common law. Moreover, Petitioners' argument is a misstatement of the issue. The issue is *not* whether time-share ownership is a "fundamental right" but whether Petitioners have some fundamental right to make payment of their taxes to the Monroe County Tax Collector instead of directly to the time-share project's manager.

For rational and fair reasons, the Florida Legislature has required payment of taxes *by the managing entity* to the Tax Collector. By requiring time-share owners to pay their ad valorem taxes to the managing entity, the time-share owners must also police themselves. If the managing entity does not follow through with tax collection from delinquent time-share owners (as happened in this case) pursuant to Fla. Stat. § 721.12(6)(a) - (f) (1991), then the owners may discharge the managing entity pursuant to Fla. Stat. § 721.14 (1991), or prosecute a managing entity under Fla. Stat. § 721.08(8) (1991) or Fla. Stat. § 772.102(1)(a)(9) (1991) for criminal or civil liability.

Finally, by allowing piecemeal tax payments to the Tax Collector, Petitioners would have (in effect) the other ad valorem taxpayers of the county underwrite the delinquent taxpayers of the time-share project involved herein.

CONCLUSION

Petitioners have failed to articulate any violation of Federal Constitutional law and, therefore, the Petition should be denied.

Respectfully submitted,

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